No. 708

Supreme Court of the United States

IB CHR SONNESEN,

Petitioner,

against

PANAMA TRANSPORT COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS.

STATEMENT.

Petitioner again disregarding the non-final character of the judgment of the New York Court of Appeals applies for a rehearing on the pretended ground that the decision of the New York Court of Appeals is in conflict with a decision of the United States Circuit Court of Appeals for the Second Circuit in *Stewart* v. *Pacific Steam Navigation Company* 3 F. 2d 392. The fact is that the *Stewart* case was not a decision of the Circuit Court of Appeals and it is in no way in conflict with the law established by the Court of Appeals for the Second Circuit, (*vide O'Neill* v. *The Cunard White Star Line Ltd.*, 160 F. 2d 446). Indeed, the decision of the New York Court of Appeals in the case at bar is based on the opinion of Chief Judge Learned Hand in the *O'Neill* case.

POINT I.

THE UNITED STATES SUPREME COURT IS WITHOUT JURISDICTION TO GRANT A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS BECAUSE THE DECISION OF THAT COURT WAS NOT A FINAL ONE. THE CASE OF *Stewart* v. *Pacific Steam Navigation Co.*, A DISTRICT COURT CASE, RELIED ON BY PETITIONER, IS IRRELEVANT.

Petitioner again fails to attempt to distinguish the cases cited in respondent's brief in opposition to his petition for a Writ. *Gospel Army* v. *Los Angeles, et al.* 331 U. S. 543; *Market Street Railway Company* v. *Railroad Commissioner of the State of California* 324, U. S. 548. There is no distinction. The doctrine in the *Gospel Army* and *Market Street* cases was recently affirmed in *Urie* v. *Thompson* No. 129, October Term 1948 decided May 31, 1949. The court said at page 7:

> "From the opinions of the state supreme court we know judicially that its judgment negating the general claim for negligence was coupled with its subsequently repudiated conclusion that petitioner had stated a cause of action under the Boiler Inspection Act and that, consequently, the court remanded the cause for trial, not for dismissal. The judgment therefore was not final; it was interlocutory and not reviewable here within the meaning of our jurisdictional statute. 28 U. S. C. §344 (b) (now §1257 (3))."

Nor does the incorrect reference to *Stewart* v. *Pacific Steam Navigation Company*, 3 F. 2d 329 change the status of the petitioner's rights. That case concerned only the venue provisions of the Jones Act (46 U. S. C. A. 688) with relation to a foreign corporation. Moreover, it appears

from the opinion that the *Stewart* case did not concern an alien seaman but an American seaman. In the part of the opinion quoted on page 4 of petitioner's brief, the court directly refers to "American" seamen.

In any event, that case is not determinative of the rights of alien seamen to recover under the Jones Act for an event which took place on the high seas on a vessel flying a foreign flag. The Court of Appeals for the Second Circuit determined that such a seaman could not recover under the Jones Act. *O'Neill* v. *The Cunard White Star Line Ltd.*, 160 F. 2d 446. The petitioner persistently ignores the *O'Neill* case for it is contrary to his contention here. He prefers to misstate the law and the facts of the totally irrelevant *Stewart* case.

CONCLUSION.

THERE IS NO JURISDICTION TO GRANT A WRIT OF CERTIORARI TO THE NON FINAL DECISION OF THE COURT OF APPEALS OF NEW YORK AND THE PETITION FOR A REHEARING SHOULD BE DENIED.

Respectfully submitted,

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WALTER X. CONNOR,
Attorneys for the Respondent.

CERTIORARI

DENIED